

DEPARTMENT OF ENVIRONMENTAL PROTECTION

**Chapter 888: DESIGNATION OF FOUR MEMBERS OF THE CHEMICAL CLASS  
PHTHALATES AS PRIORITY CHEMICALS**

**SUMMARY:** This rule designates four members of the chemical class phthalates as priority chemicals and requires reporting for certain product categories that contain one or more of these regulated phthalates.

1. **Applicability.** This chapter applies to manufacturers of children's products containing intentionally-added di(2-ethylhexyl) phthalate (DEHP), dibutyl phthalate (DBP), benzyl butyl phthalate (BBP), or diethyl phthalate (DEP), that are manufactured, sold, offered for sale or distributed for sale in Maine.
2. **Definitions.** For terms not defined in this rule, the definitions found in 06-096 CMR Chapter 880, *Regulation of Chemical Use in Children's Products*, section 1, apply. The following terms, as used in this rule, have the following meanings:
  - A. **Apparel and footwear.** "Apparel and footwear" means a consumer product worn to cover the body or feet, including but not limited to jackets, shirts, pants, raincoats, headwear, gloves, neckwear, dresses, skirts, protective wear, sleepwear, sportswear, shoes, boots and sandals.
  - B. **Arts and crafts products.** "Arts and crafts products" means a consumer product used for the creation of decorative designs or handicrafts, including but not limited to paints, dyes, brushes, easels, canvases, basketry craft supplies, candle and soap craft supplies, glasswork and enameling craft supplies, jewelry craft supplies, clay, pottery wheels, and weaving supplies.
  - C. **Building products.** "Building products" means a consumer product used in the construction or finishing of a residence, child care facility or school, including but not limited to bricks, cement, coloring, flooring, insulation, mortar, siding, wall covering, carpeting and tiling.
  - D. **Cosmetics and personal care products.** "Cosmetics and personal care products" means a consumer product intended to be rubbed, poured, sprinkled, or sprayed on, or otherwise applied to the human body or any part thereof for cleansing, beautifying, promoting attractiveness, or altering the appearance, and articles intended for use as a component of any such articles. "Cosmetics and personal care products" includes but is not limited to fragrances, hair products, nail products, skin products, personal intimacy products, make-up and personal hygiene products.
  - E. **Home maintenance products.** "Home maintenance products" means a consumer product used for the repair or maintenance of the inside or outside of a residence, child care facility or school, including, but not limited to adhesives, caulking, grouts, fillers, sealants, paints and other finishes.
  - F. **Household and commercial cleaning products.** "Household and commercial cleaning products" means soaps, detergents and other chemically formulated consumer products designed for fabric care, dish and other ware washing or surface cleaning in a residence, child care facility or school.
  - G. **Household furniture and furnishings.** "Household furniture and furnishings" means large, movable consumer products used to make a space liveable, including but not limited to beds, mattresses, couches, tables, desks, chairs, and storage units; and consumer products used as fittings and other decorative accessories for a house or room, including but not limited to bedding, textiles, clocks, ornaments, pictures, mirrors and frames.
  - H. **Personal accessories.** "Personal accessories" means consumer products that are articles or sets of articles that add completeness, convenience, and/or attractiveness to an outfit, including but not

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limited to backpacks, bags, purses, wallets, cases, jewelry and watches.

- I. Regulated Phthalates.** For the purposes of this chapter, “regulated phthalates” means any one of the following four members of a class of chemical compounds known as esters of phthalic acid, and used as plasticizers or for other purposes. Regulated phthalates include: di(2-ethylhexyl) phthalate (DEHP), with a CAS number of 117-81-7; dibutyl phthalate (DBP), with a CAS number of 84-74-2; benzyl butyl phthalate (BBP), with a CAS number of 85-68-7; and diethyl phthalate (DEP), with a CAS number of 84-66-2.

### 3. Designation of four regulated phthalates as priority chemicals

- A. Presence on chemicals of high concern list.** The four chemicals that are regulated phthalates subject to this rule are on the list of chemicals of high concern published by the department under 38 MRSA §1693-A.

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NOTE: To view the full list, go to:

<http://www.maine.gov/dep/safechem/highconcern/index.html>

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- B. Criteria for designation.** The following criteria for designation of the four regulated phthalates as priority chemicals, as set forth under 38 MRSA §1694, have been met as documented in the basis statement accompanying this chapter:

- (1) Regulated phthalates or their metabolites have been found through biomonitoring to be present in human blood, including umbilical cord blood, breast milk, urine or other bodily tissues or fluids;
- (2) Regulated phthalates or their breakdown products have been found through sampling and analysis to be present in household dust, indoor air or drinking water or elsewhere in the home environment; and
- (3) Regulated phthalates are present in a consumer product used or present in the home.

### 4. Information submission required

- A. Product categories.** Manufacturers of the following products that contain intentionally-added regulated phthalates must submit information to the department pursuant to section 4(B) of this chapter:

- (1) Apparel and footwear;
- (2) Arts and crafts products;
- (3) Building products;
- (4) Cosmetic and personal care products;
- (5) Home maintenance products;
- (6) Household and commercial cleaning products;

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(7) Household furniture and furnishings; and

(8) Personal accessories.

**B. Information required.** Subject to the deadlines for reporting in section 4(C) of this chapter, the manufacturer of a consumer product listed in section 4(A) of this chapter that contains intentionally-added regulated phthalates shall report to the department the following information:

(1) The name and address of the manufacturer and the name, address, and phone number of a contact person for the manufacturer;

(2) A description of the manufacturer's product or products containing regulated phthalates;

(3) The amount of regulated phthalates in each unit of the product;

(4) The function of regulated phthalates in the product;

(5) The number of product units sold or distributed in Maine or nationally, expressed as a range;

(6) Any assessment that has already been performed by the manufacturer of the availability, cost, feasibility and/or performance, including potential for harm to human health and the environment, of alternatives to regulated phthalates and the reason regulated phthalates are used in the manufacture of the children's product in lieu of identified alternatives; and

(7) Other information the manufacturer deems relevant to the reporting of the chemical.

**C. Deadline for reporting.** To provide sufficient time for a manufacturer to comply with the submission requirement, the deadlines for submission of information required in section 4(B) of this chapter are staggered by size of manufacturer, as provided below. The manufacturer of a consumer product listed in section 4(A) of this chapter that contains intentionally added regulated phthalates shall report to the department no later than the number of months specified below after the effective date of this rule. The notice will be considered delinquent if not received by the department by the last day of the month indicated.

(1) For a largest manufacturer, the deadline is 12 months;

(2) For a larger manufacturer, 18 months;

(3) For a medium manufacturer, 24 months;

(4) The department shall establish reporting deadlines for small manufacturers after evaluating the submission of information by medium manufacturers.

**D. Categories of Manufacturers.** For the purpose of this rule, the size of a manufacturer shall be defined as:

(1) "Largest manufacturer" means any manufacturer of children's products with annual aggregate gross sales, both within and outside of Maine, of more than one billion dollars, based on the manufacturer's most recent tax year filing.

(2) "Larger manufacturer" means any manufacturer of children's products with annual aggregate

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gross sales, both within and outside of Maine, of more than two hundred fifty million but less than or equal to one billion dollars, based on the manufacturer's most recent tax year filing.

- (3) "Medium size manufacturer" means any manufacturer of children's products with annual aggregate gross sales, both within and outside of Maine, of more than one hundred million but less than or equal to two hundred fifty million dollars, based on the manufacturer's most recent tax year filing.
- (4) "Small manufacturer" means any manufacturer of children's products with annual aggregate gross sales, both within and outside of Maine, of less than or equal to one hundred million dollars, based on the manufacturer's most recent tax year filing.

**E. Waiver of Disclosure For Products Where Substantially Equivalent Information is Already Publicly Available.** The reporting requirements in section 4 of this chapter are waived for any children's product that contains intentionally added regulated phthalates that is subject to reporting to the state of Washington under Chapter 173-334 WAC if the manufacturer has provided substantially equivalent information to the information required by this rule to the state of Washington and if that information is publically available from the state of Washington's searchable online database. A manufacturer may petition the Commissioner for an individual waiver based on a demonstration that substantially equivalent information as that required by this rule is already publicly available.

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NOTE: Upon review of information submitted pursuant to this chapter or substantially equivalent information provided to another jurisdiction that is already publicly available, the commissioner may request that a manufacturer clarify the submittal, supplement incomplete information or provide additional information not specified in this chapter if the commissioner determines that the information is needed for the department to complete its evaluation of the priority chemical. See department rules, 06-096 CMR 880(5)(D); see also 38 MRSA §1695(2).

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- 5. Reporting Fee.** A one-time reporting fee which will assessed in accordance with Department rule, 06-096 CMR 881(3).

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NOTE: Any person wishing to contest the amount of a fee imposed under this section must pay the fee by the due date specified in the department invoice and file a petition in writing with the commissioner requesting a refund. See department rules, 06-096 CMR 881(6).

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- 6. Department Address.** Information submissions may be made by regular or electronic mail. The department may provide electronic or paper reporting forms. Use the following address to send all non-electronic correspondence to the department:

Maine Department of Environmental Protection  
Safer Chemicals in Children's Products Program  
17 State House Station  
Augusta, ME 04333

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NOTE: Electronic reporting forms and/or email addresses for reporting will be provided at:  
<http://www.maine.gov/dep/safechem/index.html>

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STATUTORY AUTHORITY: 38 M.R.S.A. §§ 1691 through 1699-B

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